

24967

**DEPARTMENT OF ENERGY  
STATEMENT OF DISPUTE**

Notice of Violation  
Regarding the  
Draft Remedial Action Report for the Tank Farm Soils



STATE OF  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

1410 North Hillen • Boise, Idaho 83708-1255 • (208) 373-0602

September 6, 2001

Ms. Kathleen Hain, Director  
Environmental Restoration Division  
Department of Energy  
Idaho Operation Office  
Idaho Falls, Idaho 83401-1563

**SUBJECT: Response to Request for Extension of Deadline at WAG 3**

Dear Ms. Hain:

This letter is in response to your request for an extension to the deadline date for delivery of the draft Remedial Action Report for the Tank Farm Interim Action required under the Operable Unit 3-13 Record of Decision. DOE is requesting a three year extension for delivery of this report from July 2002 to July 2005. DOE attributes the need for this extension to the funding limitations DOE imposed on Waste Area Group 3 during Fiscal Year (FY)-2001 and unilateral decisions concerning remedial action priorities under DOE's prioritization system.

DEQ does not agree that FY2001 funding situation is good cause for a three year extension to the enforceable deadline. With less than three weeks remaining in FY2001 budget year, and the FY2002 budget appropriation still under consideration by Congress, there is no basis for granting an extension to these deadlines. Furthermore, DOE's emphasis should be focused on requesting sufficient funding for Fiscal Year 2003 and out years necessary to support full implementation of the OU3-13 Record of Decision. With respect FY2002 and the the Tank Farm Interim Action and other actions required by the OU3-13 ROD, DOE should be undertaking all actions necessary to comply with the July 2002 deadline for submittal of the Remedial Action Report. This includes undertaking actions in FY2002 to recover project delays on the Tank Farm Interim Action resulting from DOE's unilateral curtailment of remedial actions during FY2001.

Page 2

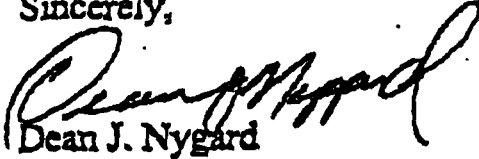
DEQ does not agree that DOE's prioritization of activities at WAG 3 using DOE's own prioritization system and explanation of unilateral decisions as described in DOE's the August 30, 2001 letter, supports that there was insufficient funding in DOE's Environmental Management budget to comply with OU 3-13 commitments during FY2001. DEQ has informed DOE of the importance of addressing the Tank Farm over the construction of the ICDF. DOE's own initiative to expedite construction of the ICDF is the cause of the budget problems explained in DOE's August 30 letter. The FFA/CO does not provide for DOE to develop it's own prioritization system as a basis for allocation of limited funds to fulfill obligations under the FFA/CO. Rather, DOE is obligated to request sufficient funds necessary to fulfill it's obligations. If funding appropriated by Congress proves to be insufficient, DOE is required by Paragraph 28.5 of the FFA/CO to inform DEQ of the shortfall such that an attempt can be made by the Agencies to determine the implication of the shortfall on milestones. This process must begin immediately upon DOE learning of the appropriation for that fiscal year, not three weeks prior to the conclusion of the fiscal year in question and prior to the appropriation for the next fiscal year.

At this point in time DOE has no basis for concluding that funding will be inadequate for FY2002 to justify any extension to any FFA/CO project and no attempts by DOE to curtail cleanup or modify the path necessary to meet current deadlines should be implemented. Based on your letter we are concerned that DOE has charted a path that will not meet the OU 3-13 ROD commitments. In keeping with Paragraph 28, we request that DOE provide information on how cleanup deadlines will be complied with and the funding necessary to comply with these commitments. This information will be used to ensure that we have understanding and agreement on funding needs necessary to ensure compliance with all FFA/CO projects, and that appropriated FY2002 funding is distributed in a manner that meets those priorities. I have discussed this matter with EPA and they are in concurrence with this position.

Please contact me at (208) 373-0285, if you have further concerns on this matter.

Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Dean J. Nygard". The signature is fluid and cursive, with the first name "Dean" being more prominent.

Dean J. Nygard  
Site Remediation Manager

cc: Margie English, DEQ  
Daryl Koch, DEQ  
Wayne Pierre, EPA Region 10





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, WA 98101

August 15, 2002

Reply To  
Attn Of: 113

Ms. Kathleen Hain, Manager  
Environmental Restoration Program  
U.S. Department of Energy  
Idaho Operations Office  
850 Energy Drive  
Idaho Falls, Idaho 83401-1563

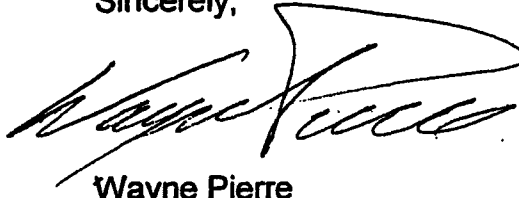
Re: Interim Remedial Action Report for the OU 3-13, Group 1, Tank Farm Interim  
Action (Draft)

Dear Ms. Hain,

This is in response to your letter dated July 28, 2002, with enclosed *Draft Interim Remedial Action Report for the O.U. 3-13, Group 1, Tank Farm Interim Action*. Our review of the Scope of Work, Critical Path Schedule for the O.U. 3-13, Record of Decision (ROD) identifies that the draft Remedial Action Report was due to the State and EPA on July 24, 2002. The Remedial Design and Remedial Action (RD/RA) Work Plan identify the due date for the Draft Remedial Action Report as July 29, 2002. The report which we received with your letter is incomplete as the required work is only partially performed. As discussed in past correspondence, the Department of Energy (DOE) is not meeting its obligations under the Federal Facility Agreement and Consent Order for this ROD-based activity. Your submission is significantly incomplete and as a result, there is no need for our review. There is a need, however, for DOE to meet its commitment and complete the Interim Action. As required in the FFA/CO and as described in the OU 3-13 Group 1 RD/RA Work Plan, the Remedial Action Report should be prepared after demobilization from the site and following the final inspection of the required work.

EPA requests that DOE provide a schedule for completing the OU 3-13 Group 1 activities and identify any 'good cause' basis for why DOE has failed to meet the deadline date for this primary document submittal. Although the incomplete draft Remedial Action Report submitted includes a schedule, it does not include a timeframe for implementation. Please contact me at (206) 553-7261, if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Pierre", with a large, sweeping loop at the end.

Wayne Pierre  
INEEL Project Manager

cc: Dean Nygard, IDEQ  
Kathy Ivy, EPA  
Margie English, IDEQ







STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706-1255 • (208) 373-0502

Dirk Kempthorne, Governor  
C. Stephen Allred, Director

August 30, 2002

Ms. Kathleen Hain, Team Leader  
Environmental Restoration Program  
U.S. Department of Energy  
Idaho Operations Office  
880 Energy Drive  
Idaho Falls, Idaho 83401-1863

RE: *Draft Interim Remedial Action Report for the OU 3-13 Group 1 Tank Farm  
Interim Action*

Dear Ms. Hain:

The Idaho Department of Environmental Quality (IDEQ) received, on July 30, 2002, the above-referenced document along with your transmittal letter dated July 28, 2002. We have determined from the document that the USDOE has failed to meet its obligations under the Federal Facility Agreement and Consent Order for the Tank Farm Interim Action required by the Record of Decision for Operable Unit 3-13. The USDOE did not complete significant portions of the tasks identified in the OU 3-13 Record of Decision and Remedial Design and the Remedial Action Work Plan.

The attached comments outline significant concerns regarding the interim action status and the above-referenced report. If you have any questions regarding these comments, or wish to discuss the matter further, please contact me at (208) 373-0288

Sincerely,

A handwritten signature in cursive script, reading "Dean Nygard", is written over the typed name.

Dean Nygard  
Site Remediation Program Manager  
Waste Management and Remediation Division

DN/ME/jc

cc: Kevin O'Neill, USDOE-ID  
Kathy Ivy, USEPA Region X  
Wayne Pierre, USEPA Region X  
Daryl Koch-DEQ  
Margie English - DEQ

Enclosure

#### General Comments

- 1) Section 1.2.1 of the report indicates the following components of the interim action were not completed: the pond liner, mechanical, and electrical systems were not installed; approximately 70 percent of the storm water collection ditches identified in the design package were not installed; approximately 50 percent of the ditches that were installed were not lined with concrete; a portion of the planned culverts were not installed; approximately 40 percent of the planned headwalls and 20 percent of the planned endwalls were not installed, and the polyurea coating was not installed. Therefore, the OU 3-13 Group 1 remedy is incomplete, and is not operational and functional. Consequently, this remedial action report is deficient.
- 2) DOE has failed to meet the remedial action objectives and remedial action goals required by the Record of Decision as summarized in Section 1.2 of the Remedial Action Report.
- 3) The schedule included in the report (Appendix G) fails to identify when DOE will complete the tank farm interim action. The DOE should provide a specific schedule (with deadlines) for implementing and completing the OU 3-13 Group 1 remedy.
- 4) Since the IDEQ considers this document deficient, the following specific comments should not be considered comprehensive of concerns we may have regarding the work completed or yet to be completed. In addition, much of this document consists of opinions the DOE has as to why the tank farm interim action, as defined in the OU 3-13 Record of Decision, can not and should not be implemented. The IDEQ believes that inclusion of these opinions in a remedial action report is inappropriate and that DOE should complete the interim action to comply with the ROD followed by the submittal of a complete Remedial Action Report. The IDEQ will conduct a comprehensive review of the remedy when it is complete.

Specific Comments

5) Section 1.2.1. Page 1-5. First Bullet

It is not clear from the information provided whether the unlined pond is currently receiving runoff from the tank farm. Please clarify where tank farm runoff is now being channeled.

6) Section 1.2.1. Page 1-5. Third Bullet

The text states, *Additionally, some area slated for polyurea installation were paved due to practical consideration.* The IDEQ was not contacted to discuss this modification to the finalized RD/RA Work Plan.

7) Section 2.1.3. Table 2-1. Page 2-5. Line Item 40 CFR 264.554 Staging Piles

The "Comments" column states that wastes were placed on tarps and covered by tarps. Please clarify when wastes were placed into the staging piles, and present the timeframe for its use. Note that hazardous or mixed waste may only remain in these units for a period up to two years, in accordance with 40 CFR 264.554 (d) (1) (iii). In addition, the physical location(s) and management requirements of the staging piles should be defined.





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101**

Reply To  
Attn Of: ECL-113

November 21, 2002

Ms. Lisa Green, Associate Manager  
Environmental Management Program  
U.S. Department of Energy  
Idaho Operations Office  
785 DOE Place  
Idaho Falls, Idaho 83402

Re: Comments on the Draft Accelerating Risk Reduction Through Integration of  
INTEC Cleanup Activities

Dear Ms. Green:

Thank you for sharing the draft proposal with us. It was very helpful towards our understanding of how DOE plans to integrate RCRA Tank Farm Closure with CERCLA Soil Remediation.

We have attached our preliminary comments on the draft for discussion in preparation for our next meeting. Please call me at (206) 553-7261, if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Pierre", written over a large, stylized, triangular graphic element.

Wayne Pierre  
Project Manager

Enclosure:

cc: Orville Green, IDEQ  
Nolan Jensen, DOE-ID  
Kathleen Trevor, INEEL-Oversight

## ATTACHMENT

#	Pg	Section	Issue	Discussion
1	1	§1	Accelerating risk reduction and removal of wastes from Idaho along with achieving substantial cost savings to the taxpayer are all worthwhile goals. However, linking these goals to the need to modify the obligations under existing agreements may cause confusion to readers. The PMP clearly states that all regulatory requirements would be met.	Note: In Section I of the PMP it states, "By accelerating high-priority cleanup, it is also possible to complete all active cleanup of the INEEL much earlier than the existing baseline plans. The work will continue to be carried out utilizing existing regulatory processes and meeting all regulatory requirements."
2	1	§1 Item #2	It may be disingenuous to link accelerating completion of the tank farm remediation with eliminating the need for short-term interim actions, especially if this term applies to the Group I, OU 3-13 Interim Action. The Group I Interim action is to address necessary protective measures during the period before the OU 3-14 ROD is signed in 2010. The Accelerating Cleanup plan is to actually delay the soils remediation ROD by 5 additional years.	The Group I, OU 3-13 Interim Action ROD surface sealing of the High Level Waste Tank Farm Soils was selected to protect the Snake River Plain Aquifer. This is one of the primary objectives of the PMP.
3	1	§1 Item #3	In supporting the PMP, the Agencies were very careful to point out that existing obligations remained. Implementing the PMP is not a substitute for meeting FFA/CO obligations; it is an opportunity to optimize costs and schedules.	In EPA's July 2002, letter endorsing the PMP, we clearly stated, "Please note that nothing in the PMP or LOI modifies any of the rights, authorities, or obligations we have in the Federal Facility Agreement and Consent Order (FFA/CO)."
4	2	§2.1 Fig 2-1	This RCRA Closure schedule provides no detail upon which to understand how closure requirements will be met	

5	2	§2.2 Fig 2-2	The post-ROD remedy implementation phase is depicted as lasting until 2045. The basis for this assumption is unknown, especially as the original tank closure schedule calls for closure by 2016?	Remedial alternatives for the tank farm soils range from complete excavation to containment in place. Costs and schedule assumptions will be assessed during the feasibility study.
6	3	§2.3	It is unclear why the components of the OU 3-13 ROD are listed here? They are independent of the High Level Waste Tank Farm Closure with separate remediation goals for the protection of health and the environment. The PMP is not a shield against existing statutory and regulatory commitments, as contained in legally binding RODs.	It would be more productive to list the components of the OU 3-14 RI/FS Work Plan as it encompasses more than the tank farm soils investigation.
7	3	§2.3 1 <sup>st</sup> Bullet	The year 2045 is not supported by any agreement with the Agencies. Based on the current enforceable schedule, the draft ROD is due in 2010 and the schedule for remediation would be dependent upon the selected remedy. Also, the purpose of the interim action is to reduce percolation by 80% through the tank farm soils.	
8	3	§2.3 Table 1	DOE did not meet its FFA/CO commitment to submit the Remedial Action Report, as DOE did not perform the required remedial actions, which it committed to in the OU 3-13 ROD, as an interim measure while the RI/FS was ongoing prior to a new ROD in the year 2010.	
9	3	§2.3 Table 1	The enforceable deadline dates appear to be different than those in the February 2000 Scope of Work, submitted pursuant to the FFA/CO. The draft Group 4 Monitoring Report/Decision Summary enforceable due date is 4/26/2007; The Group 5 draft Monitoring Report/Decision Summary was due 5/2/02; and the Group 3 draft RD/RAWP is August 29, 2003.	Please note that DOE proposed to change the due date for the Group 5 draft Monitoring Report/Decision Summary to September 18, 2003. This is contained in Section 5.8 of the November 2000 MSIP.

10	3	\$2.4 dashes- top of page	It appears that DOE is asserting that implementation of the OU 3-14 RI/FS Work Plan is a safety hazard rather than costly, which is much more the case.	It is inappropriate to rearrange safety concerns to fit current desires and only leads to a climate of mistrust.
11	4	\$2.4 2 <sup>nd</sup> Bullet	The OU 3-14 RI/FS involves more than the tank farm soils. This needs to be addressed in any acceptable path forward.	
12	4	\$2.4 3 <sup>rd</sup> Bullet	This statement is unsupported. The OU 3-13 Tank Farm Interim Action Polyurea Demonstration Report (INEEL/EXT-2000-00929, outlined a path forward to evaluate performance criteria like durability, strength, flexibility, safety and ease of application. The report on this assessment demonstrated that the polyurea had good flexibility, strength, durability, and bonding.	
13	4	\$2.4 4 <sup>th</sup> Bullet	To state that performing remediation of the WAG 3 soils and SFE-20 tank defers focus on higher priority cleanup implies that one statutory obligation (CERCLA remediation) has higher priority than another (i.e., RCRA/HWMA Closure). The PMP cannot serve as a shield against statutory and regulatory obligations, especially in competing different regulatory programs against each other.	Identification of the highest risk concerns is a factor of the process for determining risk and the type of risk being evaluated. Risk reduction is not a linear process where you complete one task before starting another. DOE is obligated to meet several statutory and regulatory obligations simultaneously.
14	5	\$2.4 Fig 2-4	The post-ROD remedy implementation phase is depicted as lasting until 2045. The basis for this assumption is unknown, especially as the original tank closure schedule calls for closure by 2016.	



15	5	§3	Giving schedule priority to the highest risks should relate to which projects are accelerated. Accelerating some projects at the cost of delaying others is not acceptable, especially if remediation of these other projects are unrelated to the projects being accelerated.	
16	6	§3.1 2 <sup>nd</sup> Bullet	This approach does not address aspects of OU 3-14 RI/FS which is distinguishable from the Tank Farm closures, e.g.:	
17	6	§3.1 2 <sup>nd</sup> Bullet	Linking the performance of the OU 3-14 RI/FS to WIR delays seems to imply that the accelerated path forward is completely dependent upon a successful WIR determination. Decisions to accelerate cleanup should not be premised on regulatory relief.	
18	6	§3.1 3 <sup>rd</sup> Bullet	There should be a discussion of synchronizing the HLW soils characterization with RCRA closure of each tank. This should be described in the revised work plan submittal	
19	6	§3.1 4 <sup>th</sup> Bullet	The FFA/CO deadline date is based on the submittal of the draft primary document and the generic timeline is presented in Figure 2-2 of the Action Plan. The draft ROD is typically submitted within 6 months of the RI/FS becoming final.	
20	6	§3.1 5 <sup>th</sup> Bullet	The schedule for implementing the tank farm remedial action is dependent upon the remedy selected and the RD/RAWP. At a minimum, this should be worded to state, "complete remediation on or before 2020."	

21	6	§3.1 6 <sup>th</sup> Bullet	The interpretation of why the interim action was selected for Group I is inconsistent with the discussion in the Declaration of the OU 3-13 ROD. It is unacceptable to allow continued infiltration through the tank farm soils during the time prior to soils remediation, which is proposed to occur at least 5 years later, then the current schedule.	
22	7	§3.1 Fig 3-1	This schedule does not provide sufficient detail to formulate decisions on how best to integrate the CERCLA and RCRA/HWMA processes. Instead, it appears that DOE is proposing that activities should proceed in a sequential manner?	
23	7	§3.2	The purpose of the PMP is to identify opportunities for accelerating schedules. It is not a substitute for the risk identification process established in the National Contingency Plan and the FFA/CO.	
24	7	§3.2 1 <sup>st</sup> Bullet 1 <sup>st</sup> dash	The disposal of CERCLA waste at INTEC is already addressed through the RD/RAWP process established under the OU 3-13 ROD and FFA/CO.	
25	8	§3.2 2 <sup>nd</sup> Bullet	The Group 6 cylinders remediation is unrelated to the tank farm closure and soil remediation and should be discussed under the FFA/CO framework.	
26	8	§3.2 3 <sup>rd</sup> Bullet	The SFE-20 tank closure and remediation is unrelated to the tank farm closure and soil remediation and should be discussed under the FFA/CO framework.	

27	8	§4 1 <sup>st</sup> Bullet	How is the word "viable" defined here? It appears crucial to interpreting this bullet?	
28	11	Attchmt 1	Although a linkage is presented between the HLW tank farm soils sampling schedule and tank closures, no linkage is provided on other OU 3-14 requirements or other OU 3-13 Groups.	



JUL-11-2002 THU 03:28 PM IDEQ ADMINISTRATION

FAX NO. 208 373 0417

P. 02 002



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
1410 North Hillman  
Boise, Idaho 83708



UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

Reply To  
Attn of: ECL-113

July 11, 2002

Ms. Jessie Hill Roberson  
Assistant Secretary for Environmental Management  
U.S. Department of Energy  
1000 Independence Avenue S.W.  
Washington, D.C. 20585

Re: Support for Department of Energy's Performance Management Plan,  
Idaho National Engineering and Environmental Laboratory

Dear Ms. Roberson:

In May 2002, we jointly signed a Letter of Intent (LOI) expressing our collective vision to accelerate cleanup at the Idaho National Engineering and Environmental Laboratory (INEEL). By June 2002, we had received a draft for our review of an INEEL Environmental Management Performance Management Plan (PMP), which generally described an accelerated cleanup approach for the facility. Within a few short weeks, that vision for accelerated cleanup has taken root. There are nine initiatives identified in the Plan covering the breadth of environmental management at INEEL that we agree are consistent with the priorities in the Letter of Intent. We support Department of Energy's (DOE's) use of a risk-based approach to decision-making.

Through the PMP, the Department of Energy is demonstrating its determination to accelerate cleanup and reduce the overall cost. We remain committed and flexible to working collaboratively with DOE to achieve our goals, despite the inevitable thorny policy and regulatory issues that may arise. Recent evidence of this often difficult but collaborative effort can be seen in work associated with integrating milestones associated with tank farm closure and remediation in Waste Area Group 3 and arriving at a new technical approach for retrieval in Pit 9. We want to continue to look for opportunities that build on our teaming successes within applicable statutes, regulations, and agreements.

Finally, our support for the PMP assumes that the necessary funding will be made available from Washington, D.C. (DOE-HQ, OMB, and Congress). It will take our combined efforts to complete cleanup at INEEL and realize our vision of a faster, better and more cost-optimized way of reaching that goal. We see the development and implementation of a consensus approach as a necessity and look forward to the challenge.

Sincerely,

C. Stephen Allred  
Director

L. John Iani  
Regional Administrator

cc: Warren Bergholz, DOE-ID